

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL NO. 1:03cr54WJG-JMR-2

BYRON LAKEITH WILLIAMS

O R D E R

This cause comes before the Court on motion [111-1] of Defendant Byron Lakeith Williams to reconsider the sentence imposed in this case and a related motion [123-1] for hearing on the motion to reconsider. Williams contends that the Court incorrectly assessed him with a quantity of drugs attributable to others, with a leadership role and with possession of a firearm in connection with a drug transaction none of which were found by a jury or admitted to by him. (Ct. R., Doc. 111, p. 1.) Williams was sentenced on December 6, 2004, to a term of 360 months imprisonment followed by 5 years of supervised release and a mandatory \$100.00 assessment. (Ct. R., Doc. 115.) The remaining charges listed in counts 1 and 3 of the indictment were dismissed. (Ct. R., Doc. 10, 115.)

According to Williams, he was improperly sentenced under *Blakely*, because he was allegedly incorrectly assessed with a quantity of drugs attributable to others, with a leadership role in the offense and with possession of a firearm in connection with a drug transaction. (Ct. R., Doc. 111, p. 1.) The indictment in this case charges Williams with knowingly and willfully conspiring to possess with intent to distribute 500 grams or more of cocaine hydrochloride, a Schedule II(a) narcotic drug controlled substance and 100

kilograms or more of marijuana, a Schedule I(c)controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 846. (Ct. R., Doc. 10.)

On or about July 19, 2004, Williams pleaded guilty to conspiracy to possess with intent to distribute 100 kilograms or more of marijuana as charged in one count one of the indictment. (Ct. R., Docs. 11, 105.) The motion filed in this case appears to be a boilerplate motion; nonetheless, the Court will address the motion.

On December 6, 2004, the Court entered its Judgment of conviction. (Ct. R., Doc. 115.) Williams did not file an appeal, but filed the instant motion, on December 9, 2004, claiming he should be resentenced based under *Blakely v. Washington*, 542 U.S. 296 (2004). (Ct. R., Doc. 111.) The *Blakely* decision was issued on June 24, 2004. *Blakely*, 542 U.S. at 296.

A district court's authority to correct or modify a sentence is limited to those specific circumstances enumerated by Congress in 18 U.S.C. § 3582(b). Section 3582(b) authorizes the district court to modify a previously imposed sentence in a limited number of circumstances, such as: (1) when the court receives a motion from the Director of the Bureau of Prisons indicating there are extraordinary and compelling reasons warranting a reduction and that reduction is consistent with applicable policy statements issued by the Sentencing Commission; (2) pursuant to Rule 35(c) of the Federal Rules of Criminal Procedure the district court, acting within seven days after the imposition of sentence, corrects an arithmetical, technical, or other clear error identified in a previously imposed sentence; and (3) when a defendant who has been sentenced to a term of imprisonment based upon a sentencing range that has subsequently been lowered by the Sentencing

Commission. 18 U.S.C. § 3582(b). Only Rule 35(c) might apply in this case, which limits the Court's authority to modify a previously imposed sentence to corrections of "arithmetical, technical or other clear error." The Court, therefore, concludes that Rule 35 does not confer authority upon the Court to reconsider Williams' sentence under the existing circumstances. *See United States v. Bridges*, 116 F.3d 1110, 1112 (5th Cir. 1997). The Court concludes that the motion to reconsider Williams' sentence and its accompanying motion for hearing should be denied. It is therefore,

ORDERED AND ADJUDGED that Defendant's motion [111-1] to reconsider his sentence imposed in this case be, and is hereby, denied. It is further,

ORDERED AND ADJUDGED that Defendant's motion [123-1] for hearing on the motion for reconsideration be, and is hereby, denied.

SO ORDERED AND ADJUDGED this the 10th day of May, 2006.

Walter J. Gex III
UNITED STATES SENIOR DISTRICT JUDGE